

REMARKS

In the Office Action it was set forth that the inventions of Group I (claims 40-46), Group II (claims 47-52), and Group III (claims 53-61) are related as subcombinations. However, the Office Action further set forth that, in the instant case, the invention of Group III has separate utility and, therefore, is distinct from the invention of Group I. For this reason, the Office Action has set forth that restriction is appropriate.

In response to this restriction requirement the applicant provisionally elects to prosecute the invention of Group I, which it is understood will also include the invention of Group II which the Office Action has not alleged is “distinct” from the invention of Group I.

The restriction requirement is, however, respectfully traversed. As such, the indication of “withdrawn” in the listing of claims is to be understood as meaning provisionally withdrawn pending the outcome of the traversal.

MPEP § 803 sets forth that if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. Thus, there are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) the inventions must be independent or distinct as claimed; and

(B) there must be a serious burden on the examiner in simultaneously searching the independent or distinct inventions.

In the present case, the Office Action has not stated that it would be a serious burden to simultaneously examine the claims directed to the invention of Group III.

From a review of the claims, it is respectfully submitted that a proper examination of the invention set forth in the claims of *both* Group II and Group III would require that the exact same

art be searched, i.e., art directed to interactive digital content distribution methods with access control being time dependent. This is clearly evident when it is considered that the **only** difference between the claims of Group II and Group III is the recitation of “audiovisual” content in the Group II claims and the recitation of “audio” content in the Group III claims. Additionally, it is respectfully questioned how an interactive “audio” distribution system can be “distinct” from an interactive “audiovisual” distribution system when the requirements for maintaining a restriction as set forth in MPEP § 802.02 are carefully considered.

Since *the same art search* is required to properly examine the claims of both Group II and Group III, it is respectfully submitted that the continued prosecution of all of the claims in the subject application would not seriously burden the Office. For this reason, it is respectfully submitted that the restriction requirement should be withdrawn.

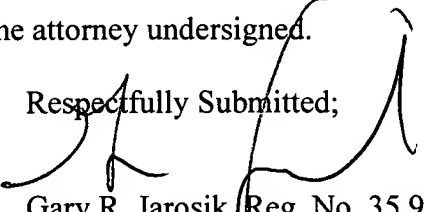
As concerns the request to resubmit IDS information for the reason that the filed “search report” was not considered, it is respectfully submitted that the references cited within the search report have been properly submitted and, in fact, have already been indicated to have been reviewed by the Examiner, i.e., the submitted IDS forms have been returned with initials. Accordingly, no further action is required.

CONCLUSION

It is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the Examiner is respectfully requested. Should it be determined, however, that a telephone conference would expedite the prosecution of the subject application, the Examiner is respectfully requested to contact the attorney undersigned.

Respectfully Submitted;

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